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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,285	06/25/2003	Duane C. Markley	EA12-001	4875

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EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/607,285	MARKLEY ET AL.	
	Examiner	Art Unit	
	Darren W. Ark	3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 3-5, 12-24, 28-30 and 32-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8-11 and 25-27 is/are rejected.
- 7) ☒ Claim(s) 6, 7 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/25/03</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I - Figs. 1-7 (first 22 and second 24 coil springs carry each rod portion 26, 28);

Species II - Figs. 8, 9 (second rod portion 128 mounted at proximal end of coil 22);

Species III - Figs. 10, 11 (first 226 and second 228 rod portions are bifurcated near distal end of rod 218 and are commonly carried by distal end of coil 22);

Species IV - Fig. 12 (first 326 and second 328 rod portions are longer than ones in Figs. 10, 11, bifurcate more proximally along rod 318 than in Figs. 10, 11);

Species V - Fig. 13 (first 426 and second 428 rod portions are bifurcated even more proximally than in Fig. 12);

Species VI - 14 (first 526 and second 528 rod portions bifurcated even more proximally than in Fig. 13);

Species VII - Figs. 15, 16 (second rod portion 628 extends within and through coil 22 and is carried at proximal end of base 20 so that it bends within coil 22);

Species VIII - Fig. 17 (handle 140 with downwardly depending portion 169, reel seat 134 is on bottom surface of horizontal portion 171, rod 718 with kick-down portion 174, rod portion 726 carried by distal end of coil 122 which becomes an intermediate line guide, only single rod portion 726 is bowed upwardly from handle 140);

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Species IX - Fig. 18 (coil is intermediate line guide, same as Fig. 17 except does not have kick-down portion 174); and

Species X - Fig. 19 (coil is intermediate line guide, handle 340 with plurality of handle portions 341, 343, 345, 347 are adjustably positioned by plurality of recessed hex-head fasteners 349 into plural positions).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Keith Grzelak on Thursday, February 26, 2004 a provisional election was made with traverse to prosecute the invention of Species , claims . Affirmation of this election must be made by applicant in replying to this Office action. Claims 3 (III-VI), 4 (VII), 5 (VII), 12 (VIII), 13-24 (VII; see spec. pg. 19, lines 10-12---"second rod portion....carried at a proximal end of base 20"), 28 (III-VII), 29 (III-VI), 30 (II), 32-41 (VII; see spec. pg. 19, lines 10-12---"second rod portion....carried at a proximal end of base 20"), and 42-47 (VIII-X) are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Drawings***

4. The drawings are objected to because in Fig. 4, the reference line for no. 44 should be extended to designate the rod end. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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5. The drawings are objected to because in Fig. 7, the leftmost occurrence of no. 62 should be changed to no. 72. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to because in Fig. 17, the line guide no. 30 should be changed to no. 130. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Specification***

7. The disclosure is objected to because of the following informalities:

Page 15, line 2, "48" should be replaced with --42--.

Appropriate correction is required.

#### ***Claim Objections***

8. Claims 14, 15 are objected to because of the following informalities:

Claims 14 and 15, line 1, "12" should be changed to --13-- since it appears that it was intended for these claims to depend from claim 13 and not claim 12.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 8, 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 8, the phrase “the first rod portion deviates from axial alignment in an upward, convex direction...” renders the claim vague and indefinite since the phrase “deviates from axial alignment” is not clear as to what axis the first rod portion alignment is being compared.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 11, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Borba, Sr. 3,507,069.

Borba, Sr. discloses a handle (12); a rod with a base (24), an coil spring (16), a first rod portion (from 32 to first line guide between 10 & 14), a second rod portion (from the first line guide to the tip of the rod), the first rod portion carried by the coil spring (16) at a distal end thereof (18) and having a distal tip terminating in a first line guide

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(between 10 & 14 in Fig. 2), and the second rod portion carried by the rod and having a distal tip end terminating in a second line guide (tip with line guide in Fig. 2).

13. Claims 1, 2, 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Meisler 2,306,638.

Meisler discloses a handle (6); a rod with a base (portion between 12 & 46), an coil spring (42), a first rod portion (upper section of 8 in Fig. 2), a second rod portion (lower section of 8 in Fig. 2), the first rod portion carried by the coil spring (16) at a distal end thereof (10, 36, 34, 40) and having a distal tip terminating in a first line guide (26, 28), and the second rod portion carried by the rod and having a distal tip end terminating in a second line guide (highest of 22 in Fig. 2 on lower side of 8).

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 1, 2, 8-11, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popeil 4,027,419 in view of Fox et al. 2,538,306.

Popeil discloses a handle (15); a rod (30) with a base (88, 39), a first rod portion (35) carried by the base at a distal end and having a distal tip end terminating in a line guide (31), and a second rod portion (36) carried by the rod and having a distal tip end terminating in a second line guide (32), but does not disclose an elongated coil spring



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mounted axially of the rod and adjacent the base at a proximal end. Fox et al. discloses an enlarged coil spring (32) mounted axially of the rod (10) and adjacent the base (36, 42) at a proximal end (38), wherein the object of the invention is to provide a relatively short rod that is extremely flexible and through the use of a spring integral with the rod, is able to compensate for the long leverage generally employed in throwing out the line. Fox et al. discloses that the maximum flexibility is provided to the rod without the necessity for increasing the length of the rod in order to obtain such flexible casting, this being of particular advantage where room for casting is limited or where there are a plurality of fisherman all grouped together, as in a boat. It would have been obvious to a person of ordinary skill in the art to at the time the invention was made to employ the spring of Fox et al. on the rod of Popeil in order to make the short rod section of Popeil extremely flexible so that it can compensate for the long leverage generally employed in throwing a line, especially where room for casting is limited.

In regard to claims 8, 9, 26, and 27, see Fig. 9.

In regard to claim 11, see Fig. 8 of Popeil and Fig. 2 of Fox et al.

### ***Allowable Subject Matter***

16. Claims 6, 7, and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA